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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
8

9 James Hagar,

10 Plaintiff,

11 vs.

12 Chief Alan G. Rodbell; Det. Brent Vahle;  
13 Det. Michelle LeFay; Det. Aaron Crawford;  
14 Det. Kevin Orvis; Sgt. Robert Hoskin;  
15 Officer Gary Gratz; Det. Michael  
16 Whitcomb; Ofc. David Alvarado; Det.  
17 Laurie Swanson; Ofc. J. Kleinheinz; Ofc. E.  
18 Rodriguez; Det. Johnnie Ghiglia; Ofc. Alex  
19 Dyer; Ofc. Trevor Anderson; Ofc. Andrew  
20 Marshall; Ofc. Scott Galbraith; Ofc. James  
21 Peters; Ofc. David Weaver; Ofc. Cody  
22 Dikeman; Sgt. Richard Slavin; Ofc. Nathan  
23 Mullilns; Sgt. Thomas Myers; Ofc.  
24 Christopher Ruscitti; Ofc. Johnathan  
25 Gambill; DOES 1-100; XYZ Companies 1-  
26 100,

27 Defendants.

No. CV10-2748-PHX-DGC

**ORDER**

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Defendants filed a motion for summary judgment on July 27, 2011. Doc. 23. The Court denied the motion without prejudice. Doc. 28. Defendants have again filed a motion for summary judgment on all claims. Doc. 31. Plaintiff has filed a response, (Doc. 35; see also Doc. 37), and Defendants have filed a reply (Doc. 36). No party has requested oral argument. For the reasons that follow, the Court will grant in part and deny in part Defendants' motion for summary judgment.

1     **I.     Background.**

2           On November 23, 2009, Plaintiff was arrested in Scottsdale, Arizona after being  
3     detained by the residents of a home he was attempting to enter. Doc. 35-1 at 2. During  
4     this arrest, Kristen Mathieson's vehicle was found backed into the backyard of the  
5     residence. Doc. 31 at 3. Later on November 23, Mathieson called the police and  
6     admitted taking Plaintiff to the Scottsdale residence and driving her vehicle into the  
7     backyard. Doc. 31 at 3. From this information, Detective Michelle LeFay determined  
8     that probable cause existed to arrest Mathieson for criminal trespass. *Id.*

9           On December 16, 2009, Mathieson was stopped by the Scottsdale Police  
10    Department while driving with Plaintiff. Doc. 35-1 at 3. During this stop, Mathieson  
11    was arrested for Criminal Trespass and her car was to be towed. *Id.* Pursuant to policy,  
12    police officers inventoried Mathieson's vehicle and discovered drug paraphernalia in a  
13    small container. *Id.* Due to the location of the drug paraphernalia and the subsequent  
14    denial of ownership, Plaintiff was arrested along with Mathieson. *Id.* While in custody,  
15    Mathieson was interviewed by Detective LeFay. Doc. 31 at 4. Mathieson told Detective  
16    LeFay she had seen guns and ammunition at Plaintiff's residence, she had seen Plaintiff  
17    carry a gun in his waistband, and that she had seen Plaintiff use drugs at his residence.  
18    Doc.31-3 at 35-41. Based on the information from Mathieson, the drug paraphernalia  
19    found in the vehicle, and a criminal history report of Plaintiff<sup>1</sup>, a warrant was issued to  
20    search Plaintiff's residence. Doc. 31-1 at 6.

21           The Scottsdale PD SWAT Team was tasked with serving the search warrant  
22    because the residence was believed to contain dangerous guns. Doc. 31-1 at 8. On  
23    December 17, 2009, the SWAT Team, while approaching the door, dismantled at least  
24    one security camera and used a ram to breach the door and enter the residence. Doc. 31-1  
25    at 8; Doc. 35-1 ¶¶ 22-24. While the SWAT Team was securing the residence, several

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27           <sup>1</sup> Detective Vahle also determined from records at the Arizona Department of  
28    Corrections that Plaintiff was prohibited from possessing any and all firearms. Doc. 31-5  
   at 32.

1 light/sound diversionary devices were deployed including one device that was deployed  
2 inside of Plaintiff's residence.<sup>2</sup> Doc. 31-1 ¶ 29; Doc. 35-1 ¶ 25. After the home was  
3 secured, the SWAT Team left while other personnel executed the search. Doc. 31-1 ¶ 31.  
4 The interior of the home, the garage, and the attic were searched. Doc. 31-1 at 9-10.  
5 Plaintiff's vehicle was impounded and a warrant was issued to search the vehicle.  
6 Doc. 31-5 at 50-51.

7 After a criminal conviction, Plaintiff filed this civil suit against Defendants  
8 alleging trespass, trespass to chattels, false imprisonment, conversion, failure to train, and  
9 violations of Plaintiff's Fourth, Fifth and Fourteenth Amendment rights.

## 10 **II. Analysis.**

11 Summary judgment is appropriate when the pleadings, the disclosure materials,  
12 the discovery, and the affidavits establish that "there is no genuine dispute as to any  
13 material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ.  
14 P. 56(a). A material fact is one which may affect the outcome of the case. *See Anderson*  
15 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if the evidence is  
16 such that a reasonable trier of fact could return a verdict in favor of the nonmoving party.  
17 *Id.*

18 A party seeking summary judgment "always bears the initial responsibility of  
19 informing the district court of the basis for its motion, and identifying those portions of  
20 the pleadings, depositions, answers to interrogatories, and admissions on file, together  
21 with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of  
22 material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (internal quotation  
23 marks omitted). Where the movant will have the burden of proof on an issue at trial, it  
24 must "affirmatively demonstrate that no reasonable trier of fact could find other than for  
25 the moving party." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007).  
26 "On an issue as to which the nonmoving party will have the burden of proof, however,

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27  
28 <sup>2</sup> Plaintiff refers to these devices as "flash bangs."

1 the movant can prevail merely by pointing out that there is an absence of evidence to  
2 support the nonmoving party's case." *Id.* (citing *Celotex*, 477 U.S. at 323).

3 If the movant has sustained its burden, the nonmoving party must "show a genuine  
4 issue of material fact by presenting *affirmative evidence* from which a jury could find in  
5 [its] favor." *FTC v. Stefanchik*, 559 F.3d 924, 929 (9th Cir. 2009) (emphasis in the  
6 original). The nonmoving party must go beyond the allegations set forth in its pleadings.  
7 *See* Fed. R. Civ. P. 56(c). Conclusory allegations, unsupported by factual material, are  
8 insufficient to defeat a motion for summary judgment. *Taylor v. List*, 880 F.2d 1040,  
9 1045 (9th Cir. 1989). "[B]ald assertions or a mere scintilla of evidence" will not suffice.  
10 *Stefanchik*, 559 F.3d at 929. Indeed, the mere presence of "some metaphysical doubt as  
11 to the material facts" is insufficient to withstand a motion for summary judgment.  
12 *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "Where  
13 the record taken as a whole could not lead a rational trier of fact to find for the  
14 nonmoving party, there is no 'genuine issue for trial.'" *Id.* at 587 (citation omitted).

15 In resolving a summary judgment motion, "the court does not make credibility  
16 determinations or weigh conflicting evidence." *Soremekun*, 509 F.3d at 984. Rather,  
17 "[t]he evidence of the [nonmoving party] is to be believed, and all justifiable inferences  
18 are to be drawn in [its] favor." *Anderson*, 477 U.S. at 255. Inferences, however, are not  
19 drawn out of the air; the nonmoving party must provide a factual predicate from which  
20 the inference may justifiably be drawn. *See Richards v. Nielsen Freight Lines*, 602 F.  
21 Supp. 1224, 1244–45 (E.D. Cal.1985).

22 Courts disfavor summary judgment when relevant evidence remains to be  
23 discovered. *Taylor v. Sentry Life Ins.*, 729 F.2d 652, 656 (9th Cir. 1984). The burden is  
24 on the nonmoving party to show specific facts it hopes to discover that will raise an issue  
25 of material fact. *Hall v. Hawaii*, 791 F.2d 759, 761 (9th Cir. 1986); *see also Continental*  
26 *Maritime v. Pacific Coast Metal Trades*, 817 F.2d 1391, 1395 (9th Cir. 1987). Plaintiff  
27 argues that it is inappropriate for the Court to consider summary judgment at this time,  
28 but he has not provided an affidavit pursuant to Rule 56(d) specifying specific reasons

1 why he cannot present facts opposing the motion. The Court believes that adequate time  
2 has been given to both parties for discovery.

3 **A. Constitutional Claim: 42 U.S.C. § 1983.**

4 Plaintiff nebulously alleges violations of his Fourth, Fifth, and Fourteenth  
5 Amendment rights. Doc. 1-1 at 10. Because he has failed to address the Fifth and  
6 Fourteenth Amendment violations with any specificity, the Court will consider only his  
7 Fourth Amendment allegation. *See Carmen v. San Fransisco Unified School Dist.*, 237  
8 F.2d 1026, 1031 (9th Cir. 2001) (denying to search the record for a genuine issue of fact  
9 because the court is not the lawyer for the respondent and doing so would deprive the  
10 moving party of an opportunity to address the matter in its reply).

11 The Defendants believe that Plaintiff's Fourth Amendment violation arises from  
12 an alleged unreasonable search and seizure of Plaintiff's residence. Doc. 31 at 11.  
13 Plaintiff alleges that five security cameras were ruined, the front door and the door frame  
14 were damaged, a two foot square portion of the living room carpet was burned, ceilings  
15 in multiple rooms were cracked, and his pet dogs were terrorized during the search of his  
16 residence on December 17, 2009. Doc. 37-1 at 10, 15-16; Doc. 37-2 at 6-7; Doc. 37-3  
17 at 5. Defendants allege that the only damage to Plaintiff's residence was minor damage  
18 to the front door and a minor burn on the rug. Doc. 31-1 at. 11-12.

19 An otherwise lawful search and seizure can violate the Fourth Amendment if it is  
20 executed in an unreasonable manner. *See United States v. Jacobsen*, 466 U.S. 109, 124  
21 (1984). "To assess the reasonableness of th[e] conduct, [a court] must balance the nature  
22 and quality of the intrusion on the individual's Fourth Amendment interests against the  
23 importance of the governmental interests alleged to justify the intrusion." *Id.* at 125  
24 (internal quotation marks omitted). Plaintiff has presented evidence that supports his  
25 allegations of damage to his residence during the December 17 search.<sup>3</sup> *See, e.g., San*

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26  
27 <sup>3</sup> Defendant's objected to paragraphs 24-28 in Plaintiff's statement of facts. This  
28 objection is overruled because the three affidavits provided by Plaintiff are sufficient to  
support the factual allegations that are relevant to this claim. Plaintiff provided affidavits  
of Allison Wolfe (owner of the home searched on December 17), Jacob Wolfe (Allison's

1 *Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962 (9th Cir.  
 2 2005) (upholding the district court's denial of summary judgment when damage to the  
 3 plaintiff's property included, *inter alia*, cutting off mailbox, breaking refrigerator door,  
 4 and removal of a concrete slab); *Youngbey v. District of Columbia*, 766 F.Supp.2d 197,  
 5 220 (D.D.C. 2011) (holding that the use of flash bang grenades in a residence of a  
 6 homicide suspect who might have a gun did not warrant dismissal at the summary  
 7 judgment stage). It is not clear that the alleged damage rises to the level of a  
 8 constitutional violation because officers executing a search warrant occasionally "must  
 9 damage property in order to perform their duty." *Dalia v. United States*, 441 U.S. 238,  
 10 258, (1979). Whether the damage alleged by Plaintiff is unreasonable, however, is a  
 11 question of fact best left for the jury to decide with the benefit of a full record. *See Chew*  
 12 *v. Gates*, 27 F.3d 1432, 1443 (9th Cir. 1994) (reasonableness under the Fourth  
 13 Amendment is ordinarily a fact question for the jury). Thus, the Court denies Defendants  
 14 motion for summary judgment with respect to this Fourth Amendment violation.

#### 15 **B. Claim I: Trespass to Land.**

16 Plaintiff alleges that Defendants trespassed on his property during the search of his  
 17 residence on December 17, 2009, under the guise of a purportedly valid search warrant.  
 18 Doc. 35 at 12. Defendants argue that this claim fails as a matter of law because they were  
 19 acting under a valid search warrant and an officer is not liable for trespass when he is  
 20 required to enter private property to perform his duties. Doc. 31 at 12. Defendants, as  
 21 the parties moving for summary judgment, have the burden of identifying those portions  
 22 of the record which demonstrate the absence of a genuine issue of material fact. *See*  
 23 *Celotex*, 477 U.S. at 323. Defendants have presented evidence sufficient to support a  
 24 finding that they entered Plaintiff's residence pursuant to a valid search warrant, and that  
 25 the warrant was based on probable cause. Doc. 31-2 to Doc. 31-5.

26  
 27 son), and a declaration from Plaintiff made under penalty of perjury. *See Winterrowd v.*  
 28 *Nelson*, 480 F.3d 1181, 1183 n.3 (9th Cir. 2007) (noting that the affidavit requirements of  
 Fed. R. Civ. P. 56(e) is substantially complied with when a party swears under penalty of  
 perjury).

1 “All data necessary to show probable cause for the issuance of a search warrant  
2 must be contained within the four corners of a written affidavit given under oath.”  
3 *Gourde*, 440 F.3d at 1067 (quoting *United States v. Anderson*, 453 F.2d 174, 175 (9th  
4 Cir. 1971) (internal quotation marks omitted). Agent Vahle submitted an affidavit to  
5 Superior Court Judge Donofrio which contained the following information:

6 • Detective Vahle has been with the Scottsdale Police Department  
7 since January 2000. Detective Vahle has made numerous burglary, drug, theft,  
8 and property crime related investigations and arrests and is familiar with such  
9 crimes. Doc. 31-5 at 31. Detective Vahle has been involved with numerous  
10 search warrants related to property, fraud and forgery, weapons violations, and  
11 drug related offenses. *Id.*

12 • On November 23, 2009 Plaintiff was investigated for an alleged  
13 crime of burglary, possession of burglary tools, and criminal trespass after being  
14 tackled and detained by family members of a home he was attempting to enter. *Id.*  
15 at 31-32. Burglary tools were found in Kristen Mathieson’s vehicle at the home  
16 where Plaintiff was arrested at. *Id.* The case was submitted to Maricopa County  
17 Attorney’s Office, but was turned down because of “no likely hood [sic] of  
18 conviction.” *Id.* Mathieson later contacted Scottsdale dispatch regarding the  
19 incident and admitted taking Plaintiff to the home and backing her vehicle into the  
20 backyard. *Id.* Based on the totality of the circumstances, Scottsdale City  
21 Prosecutor agreed to charge Mathieson with misdemeanor criminal trespass and  
22 Plaintiff with criminal trespass, possession of burglary tools, and disorderly  
23 conduct.

24 • Detective Vahle conducted a criminal history check on Plaintiff and  
25 discovered three felony convictions for manufacturing dangerous drugs and  
26 fortifying a building for drug trafficking. *Id.* Detective Vahle also discovered that  
27 Plaintiff was prohibited from possessing any and all firearms and had a couple  
28 prior weapons misconduct arrests. *Id.* at 32-33.



1           •       On December 16, 2009, detectives conducted surveillance on  
2 Mathieson with the goal of arresting her for criminal trespass. *Id.* at 33. During  
3 the surveillance, detectives followed Mathieson to Plaintiff's residence where  
4 Plaintiff joined Mathieson in her vehicle. *Id.* About 45 minutes later, both  
5 Plaintiff and Mathieson were stopped by detectives in the vehicle. *Id.* Mathieson  
6 was arrested and the detectives conducted an inventory of her vehicle prior to  
7 towing it. *Id.* During the inventory, a drug kit with drug paraphernalia was found  
8 within the reach of both Mathieson and Plaintiff. *Id.* Plaintiff and Mathieson  
9 denied knowledge of the drug kit and Plaintiff was arrested. *Id.*

10           •       While Mathieson was in custody, she was interviewed by detectives  
11 where she confirmed she was with Plaintiff while they unlawfully entered the  
12 backyard of the home on November 23, 2009. *Id.* Mathieson also told police that  
13 she had personally seen Plaintiff use Methamphetamines in his office and that  
14 Plaintiff "has lots of guns." *Id.* After being asked to clarify, Mathieson stated that  
15 she had seen lots of gold colored bullets about three inches long and a gun in  
16 Plaintiff's office. *Id.* Mathieson asked the detectives what is that "ariel thing that  
17 goes with a band, that you see them shoot and it's got like a strip" and "like you  
18 see in the movies," and then made a motion with her arms like she was shooting a  
19 large gun. *Id.* The detectives clarified that Mathieson was speaking about a  
20 machine gun with a band or strip of bullets fed into the gun. *Id.* Mathieson was  
21 sure it was a real gun and that it was sitting on top of the file cabinet. *Id.*  
22 Mathieson further stated that she had seen Plaintiff carry a handgun in his front  
23 waistband on several occasions. *Id.* at 33-34. A handgun was believed to be at  
24 Plaintiff's residence because one was not found in his possession when he was  
25 arrested. *Id.*

26       Considering the totality of the circumstances, the Court holds that there was a fair  
27 probability that evidence of drugs, drug paraphernalia, or firearms would be found in  
28 Plaintiff's residence. The affidavit provided sufficient detail about the type of guns and



1 ammunition Mathieson saw at Plaintiff's residence one night prior. The affidavit  
2 provided information about Plaintiff using methamphetamine in his office. The affidavit  
3 further identified that Plaintiff had three previous drug convictions and was not legally  
4 authorized to carry or possess any firearm. This information clearly provided probable  
5 cause to believe that Plaintiff's residence may contain drugs, drug paraphernalia, or  
6 firearms. Because the warrant underlying the search on December 16 was based on  
7 sufficient probable cause, Defendants' presence at Plaintiff's home does not constitute  
8 the tort of trespass. *See United States v. Capps*, 435 F.2d 637, 640 n.4 (9th Cir. 1970)  
9 (stating that when an officer's duty requires him to enter private property his action is  
10 justifiable); Ariz. Rev. Stat. Ann. § 13-3916 (2011) (West) (permitting an officer to break  
11 into a building or premises to execute a warrant).

12 Plaintiff argues that the search warrant was unlawful because it was based on  
13 highly suspect information. Doc. 35-1 ¶ 22. The Court disagrees. In establishing  
14 probable cause, "only the probability, and not a prima facie showing, of criminal activity"  
15 is necessary. *State v. Emery*, 642 P.2d 838, 850 (Ariz. 1982) (quoting *Spinelli v. United*  
16 *States*, 393 U.S. 410, 419 (1969)). Evidence supporting a finding of probable cause for a  
17 search warrant may be based on information by accomplices, hearsay statements, or other  
18 inadmissible evidence. *State v. Archer*, 534 P.2d 1083, 1085-86 (holding that statements  
19 from a juvenile accomplice in support of a search warrant was sufficient to provide  
20 probable cause because the juvenile personally witnessed some of the crimes); *State v.*  
21 *Adamson*, 665 P.2d 972, 980 (Ariz. 1983) (holding that evidence supporting a finding of  
22 probable cause for a search warrant need not meet the standard for admissibility of trial);  
23 *United States v. One 56-Foot Yacht Named Tahuna*, 702 F.2d 1276, 1284 (9th Cir. 1983)  
24 (finding that an affidavit for a search warrant may be based on hearsay information and  
25 need not reflect direct personal observations). The Court will grant Defendants' motion  
26 for summary judgment with respect to Claim I.

27 **C. Claim II: Trespass to Chattels.**

28 Plaintiff alleges that Defendants intentionally, knowingly, or recklessly interfered

1 with Plaintiff's right of possession in his truck, electronic equipment, pets, and other  
2 personal property. Doc. 35 at 13. Defendants argue that this claim fails as a matter of  
3 law because the alleged trespass to these chattels occurred pursuant to a search warrant  
4 and was supported by sufficient probable cause. Doc. 31 at 12.

5 In Arizona, "the tort of trespass to a chattel may be committed by intentionally  
6 dispossessing another of the chattel or using or intermeddling with the chattel in the  
7 possession of another." *Sprint Commc'ns Co. v. Western Innovations*, 618 F. Supp.2d  
8 1101, 1114 (D. Ariz. 2009) (citing *Koepnick v. Sears Roebuck Co.*, 762 P.2d 609, 617-  
9 618 (Ariz. App. 1988); Restatement (Second) of Torts § 217 (1965)). In *Koepnick*, the  
10 Court cited comment b to § 221 of the Restatement providing that "dispossession may  
11 occur when someone intentionally assumes physical control over the chattel in a way  
12 which will be destructive of the possessory interest of the other person. . . . [O]n the  
13 other hand, an intermeddling is not a dispossession unless the actor intends to exercise a  
14 dominion and control over it inconsistent with a possession in any other person other than  
15 himself." 762 P.2d at 618.

16 With regard to the electronic equipment, Plaintiff alleges that Defendants  
17 interfered with Plaintiff's right of possession in his security cameras because the property  
18 was damaged or destroyed. Doc. 35 at 13. Defendants allege that the presence of  
19 exterior security cameras were believed to be a detriment to officer safety and one camera  
20 was removed by Detective Marshall with a pry tool while the SWAT Team was  
21 approaching Plaintiff's door during the search of December 17, 2009. Doc. 31-1.  
22 Because Plaintiff alleges that five security cameras were completely destroyed, (Doc. 37-  
23 1 at 16) and Defendants only discuss the removal of one (Doc. 35 ¶¶ 26, 43), a dispute to  
24 a material fact exists. The Court cannot grant summary judgment with respect to a  
25 trespass to chattels claim for the security cameras.

26 With regard to the pets and other personal property, Plaintiff alleges that  
27 Defendants interfered with his possessory interest in his pets and "other personal  
28 property." Doc. 35 at 13. Plaintiff does not define or identify any other personal

1 property and therefore the Court will only consider a trespass claim for his pets. Plaintiff  
2 alleges that Defendant's pointed their weapons, yelled at, and threw a flash bang grenade  
3 at his dog. Doc. 37-1 at 10. Plaintiff does not, however, provide a factual basis to show  
4 any interference with his possessory interest in his dog. Nor does Plaintiff allege any  
5 injury resulting from Defendants' conduct. The Court will grant summary judgment on  
6 Plaintiff's claim regarding his pets and other personal property.

7 Plaintiff claims that Defendants intentionally, knowingly, or recklessly interfered  
8 with his right of possession in his truck because it was damaged or destroyed.<sup>4</sup> Doc. 35  
9 at 13. Defendants argue that Plaintiff's truck was lawfully removed from his residence  
10 and that the warrant to search Plaintiff's truck was based on probable cause. Doc. 31 at  
11 12; Doc. 36 at 8. The Court finds there was sufficient probable cause to impound the  
12 vehicle during the December 17 search and that the subsequent search of Plaintiff's  
13 vehicle was based on a valid search warrant.

14 It is undisputed that during the search of Plaintiff's residence on December 17,  
15 multiple guns, ammunition, drug paraphernalia, and other items were found. Doc. 31-1  
16 at 11-12. Among the items found was an empty Heckler & Koch pistol box with an  
17 identification number of 26093051, which, after conducting an inquiry, Sargent Hoskin  
18 learned was stolen. Doc. 31 at 8. Given this information, the detectives reasonably  
19 believed that Plaintiff's truck and metal toolbox may contain additional evidence of  
20 weapons misconduct. Doc. 31-1 at 12. Because of the possibility that it could be moved  
21 by others, detectives arranged to have the truck towed to a district station so that an  
22 addendum search warrant could be obtained. Doc. 31-1 at 12. The items recovered  
23 during the search, along with the reasonable inference that a Heckler & Koch pistol may  
24 be found in Plaintiff's vehicle, were sufficient to lead a reasonable person to believe that  
25 Plaintiff's vehicle may contain drugs or firearms.

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26  
27 <sup>4</sup> Plaintiff has not provided any evidence that his vehicle was damaged other than  
28 stating that he was missing a silver combination lock that went to his toolbox. Doc. 37-1  
at 11.

1 The affidavit for the warrant to search Plaintiff's vehicle was based on the items  
2 recovered from the December 17 search along with the information provided in the  
3 affidavit of the first search warrant. Doc. 31-5 at 50-51. This information is sufficient to  
4 support a valid search warrant and the Court will grant summary judgment with respect to  
5 the seizure and search of Plaintiff's vehicle. *Capps*, 435 F.2d at 640 n.4.

6 **D. Count III: False Imprisonment.**

7 Plaintiff alleges that his arrest was based entirely on "suspect information from a  
8 known drug addict with psychological and mental health problems, who was also off her  
9 psychotropic medications for some length of time." Doc. 35 at 14. Plaintiff fails to  
10 identify, however, when he was falsely arrested or imprisoned.

11 Two arrests are relevant to the facts in this case. Plaintiff was arrested on  
12 November 23, 2009, when he was detained by a family as he was attempting to break into  
13 their home. Doc. 37-1 at 3-5. Plaintiff was also arrested on December 16, 2009, when  
14 drug paraphernalia were found in Mathieson's vehicle in which he was a passenger.  
15 Doc. 37-1 at 7-8. Defendants argue that probable cause existed to arrest Plaintiff during  
16 both occasions. *See Slade v. City of Phoenix*, 541 P.2d 550 (1975) (unlawful detention  
17 essential element of false arrest and false imprisonment); *see also Cullison v. City of*  
18 *Peoria*, 584 P.2d 1156 (1978) (false imprisonment defined as detention of person without  
19 consent and without lawful authority). The Court agrees.

20 Probable cause to arrest exists when "reasonably trustworthy information and  
21 circumstance would lead a person of reasonable caution to believe that a suspect has  
22 committed an offense." *State v. Hoskins*, 14 P.3d 997, 1007-08 (Ariz. 2000). "Probable  
23 cause is something less than the proof needed to convict and something more than  
24 suspicions." *State v. Howard*, 785 P.2d 1235, 1238 (Ariz. App. 1989).

25 On November 23, 2009, Plaintiff attempted to enter a deceased friend's home to  
26 recover some items that Plaintiff alleges he left there. Doc. 37-1 at 3. While attempting  
27 to open the back door of the home, the family of the decedent tackled Plaintiff and  
28 detained him until police arrived. Doc. 37-1 at 3-4. These undisputed facts are sufficient

1 to lead a person of reasonable caution to believe that Plaintiff had criminally trespassed.

2 On December 16, 2009, Mathieson drove to Plaintiff's home. Doc. 37-1 at 6.  
3 Plaintiff and Mathieson left the house in Mathieson's vehicle. *Id.* They were stopped by  
4 police and Mathieson was arrested for criminal trespass. *Id.* at 7. Mathieson's car was  
5 inventoried before being towed and drug paraphernalia was found within the reach of  
6 both Mathieson and Plaintiff. *Id.* at 8. Both denied ownership of the drugs, so Plaintiff  
7 was arrested along with Mathieson. *Id.* These undisputed facts are sufficient to lead a  
8 person of reasonable caution to believe that Plaintiff was in possession of illegal drug  
9 paraphernalia, justifying his arrest. Defendants' motion for summary judgment with  
10 respect to false imprisonment is granted.

11 **E. Count IV: Conversion.**

12 The only property mentioned in Plaintiff's discussion of this count is his truck.  
13 Doc. 35 at 16-17. For reasons discussed above, the Court concludes that Defendants  
14 lawfully seized and searched the truck. No tort for conversion occurred. Ariz. Rev. Stat.  
15 Ann. § 13-413; *see Chambers*, 399 U.S. at 51.

16 **F. Count V: Failure to Train.**

17 Plaintiff alleges that Defendants breached their duty to understand, train, and  
18 enforce the law. Doc. 35 at 19. Plaintiff alleges that Defendants were deliberately  
19 indifferent to Plaintiff and the community and that this unethical conduct caused damage.  
20 Doc. 35 at 19. Defendants argue that Plaintiff has failed to provide any evidence to  
21 support a claim for failure to train.<sup>5</sup> Doc. 31 at 14.

22 The inadequate training of police officers may support a claim under § 1983 only  
23 where "the failure to train amounts to deliberate indifference to the rights of persons with  
24 whom the police come into contact." *City of Canton, Ohio v. Harris*, 489 U.S. 378, 388  
25 (1989). "Only where a failure to train reflects a 'deliberate' or 'conscious' choice by a

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26  
27 <sup>5</sup> Defendants also note that Plaintiff did not name the municipality in this claim. It  
28 is noted that every case that Plaintiff relies on for this claim has named the municipality  
as a party.

1 municipality – a ‘policy’ defined by our prior cases – can a city be liable for such a  
2 failure under § 1983.” *Id.* at 389; *Pembaur v. Cincinnati*, 475 U.S. 469, 483-84 (1986)  
3 (“[M]unicipal liability under § 1983 attaches where – and only where – a deliberate  
4 choice to follow a course of action is made from among various alternatives” by city  
5 policy makers).

6 Plaintiff has provided no evidence to show a policy or a deliberate indifference to  
7 rights of persons generally or Plaintiff specifically. The Court will grant summary  
8 judgment on this claim. *Taylor*, 880 F.2d at 1045 (“summary judgment motion cannot be  
9 defeated by relying solely on conclusory allegations unsupported by factual data”); *Jones*  
10 *v. Cmty. Redevel. Agency*, 733 F.2d 646, 649 (9th Cir. 1984) (holding that conclusional  
11 allegations not supported by facts an insufficient basis for a claim).

12 **IT IS ORDERED:**

13 Defendants’ motion for summary judgment (Doc. 31) is **granted** with respect to  
14 the following claims: Plaintiff’s Claim I (Trespass), Claim II (Trespass to Chattels) with  
15 respect to any claim for personal property, pets, and Plaintiffs vehicle, Claim III (False  
16 Imprisonment), Claim IV (Conversion), Claim V (Failure to train). The motion is **denied**  
17 with respect to the following claims: Plaintiff’s Fourth Amendment claim alleging an  
18 unreasonable search of Plaintiff’s home, Claim II (Trespass to Chattels) with respect to  
19 Plaintiffs security cameras.

20 Dated this 12th day of March, 2012.

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David G. Campbell  
25 United States District Judge  
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